



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2018-0096, Notice 1]

Receipt of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petitions.

SUMMARY: Ricon Corporation (Ricon), has determined that certain S-Series and K-Series Titanium wheelchair lifts do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform Lift Systems for Motor Vehicles*. Due to Ricon's determination, Navistar, Inc. on behalf of IC Bus, LLC (Navistar), and Daimler Trucks North America (DTNA), who installed the S-Series and K-Series Titanium wheelchair lifts in their buses, determined that certain model year (MY) 2015-2019 IC and Thomas Built buses do not comply with FMVSS No. 404, *Platform Lift Installation in Motor Vehicles*. Ricon, Navistar, and DTNA, collectively referred to as the "the petitioners," filed the appropriate noncompliance reports and petitioned NHTSA for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of the petitioners' petitions.

DATES: The closing date for comments on the petition is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered fully possible.

When the petitions are granted or denied a notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000, (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview: Ricon determined that certain S-Series and K-Series Titanium wheelchair lifts do not fully comply with paragraph S6.10.2.4 of FMVSS No. 403, *Platform Lift Systems for Motor Vehicles* (49 CFR 571.403) and filed a noncompliance report dated July 4, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Ricon subsequently petitioned NHTSA on August 1, 2018, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Because of Ricon's determination, Navistar and DTNA, who installed the S-Series and K-Series Titanium wheelchair lifts in their buses, determined that certain model year (MY) 2015-2019 IC and Thomas Built buses do not comply with paragraph S4.1.1 of FMVSS No. 404, *Platform Lift Installation in Motor Vehicles* (49 CFR 571.404). Navistar filed a noncompliance report dated August 17, 2018, and DTNA filed a noncompliance report dated August 23, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Subsequently, Navistar petitioned NHTSA on August 31, 2018, and DTNA petitioned NHTSA on September 21, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of the petitioners' petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Equipment and Vehicles Involved: On July 4, 2018, Ricon submitted a noncompliance report and then on August 1, 2018, subsequently submitted a petition that reported approximately

4,375 S-Series and K-Series Titanium wheelchair lifts, manufactured between October 2, 2012, and May 9, 2018, are potentially involved.

In concert with Ricon's filings, Navistar and DTNA who installed the S-Series and K-Series Titanium wheelchair lifts sold by Ricon in their vehicles also filed noncompliance reports and inconsequential noncompliance petitions. Appropriately, Navistar and DTNA determined the following vehicles are potentially involved:

Approximately 631 MY 2015-2019 IC CE buses, manufactured between April 10, 2014, and May 9, 2018.

Approximately 84 MY 2015-2019 Thomas Built Series Saf-T-Liner C2 and HDX buses, manufactured between June 16, 2014, and January 11, 2018.

Accordingly, Ricon reported that 4,375 S-Series and K-Series Titanium wheelchair lifts to be potentially involved while the OEMs reported, in total, 715 vehicles with the noncompliant S-Series and K-Series Titanium wheelchair lifts potentially involved. NHTSA made inquiries to Ricon to try to reconcile the difference in number of lifts reported versus the number of vehicles reported on multiple occasions. Then in an e-mail dated June 10, 2020, Ricon provided a table that reported that 4,481 S-Series and K-Series Titanium wheelchair lifts were produced, with 312 going to dealers, 4,129 going to OEMs, and 40 to its parent company, Wabtec Corporation (Wabtec). Below is a table that outlines the different numbers as reported by Ricon, by date, for the S-Series and K-Series Titanium wheelchair lifts and the total number of vehicles as reported by the OEMs.

| RICON S-Series and K-Series Titanium wheelchair lifts potentially involved | | | |
|---|-----------------------------|------------------------------|----------------------------|
| | Ricon's 7/4/18 Reporting | Ricon's 6/10/20 Reporting | Total OEM 573 Reporting |
| Dealers | | 312 | |
| OEMs | | 4,129 | |

| | | | |
|--------------|--------------|--------------|------------|
| Wabtec* | | 40 | |
| Total | 4,375 | 4,481 | 715 |

*Ricon is a subsidiary of WABTEC

The total number of vehicles reported by the OEMs has not changed and the number S-Series and K-Series wheelchair lifts as reported by Ricon on June 10, 2020, are the most up-to-date numbers. Based on current numbers as shown in the table above, there are still 3,766 lifts that have not been accounted for by sales to vehicle manufacturers and Ricon believes that these lifts were distributed and sold through other channels. Despite several meetings and communication with Ricon directed toward identifying their ultimate destination, NHTSA has not been able to determine where and how the lifts not sold to vehicle manufacturer were sold. NHTSA also feels it is prudent to emphasize that any decision on these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and vehicles under their control after the petitioners notified them that the subject noncompliance existed.

III. Noncompliance: Ricon explains that its Titanium S-Series and K-Series platform lifts do not comply with the inner barrier interlock requirements of FMVSS 403, S6.10.2.6 when tested in accordance with the test procedure at S7.6.1. The subject lifts, as installed in certain commercial buses and school buses, do not comply with paragraph S4.1.1 of FMVSS No. 404.

IV. Requirements: Paragraph S6.10.2.4 of FMVSS No. 403, includes the requirements relevant to the deployment of the inner roll stop. When the platform reaches a level where the inner roll stop is designed to deploy, the platform must stop unless the inner roll stop has deployed.

Verification with this requirement is made by performing the test procedure specified in S7.6.

Paragraph S4.1.1 of FMVSS No. 404, includes lift-equipped buses, school buses, and MPVs other than motor homes with a GVWR greater than 4,536 kg (10,000 lb.) must be equipped with a public use lift certified as meeting FMVSS No. 403.

V. Summary of Petitions: The following views and arguments presented in this section, “V. Summary of Petitions,” are the views and arguments provided by the petitioners. They have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioners described the subject noncompliance and stated their belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

In support of their petitions, the petitioners submitted the following arguments:

1. The performance of the Ricon lifts do not create an increased risk to safety:

- a) The petitioners state the S-Series and K-Series Titanium lifts are commercial application lifts and are public use lifts. The inner barrier is designed to lay flat for the lift occupant to easily transition from the platform into the vehicle and vice versa. When the inner barrier is deployed (i.e. raised upright), it prevents the occupant from moving off the platform edge at the start of the vehicle. The inner barrier interlock on the Titanium units utilizes a rod which travels across the front of the base plate. There are plastic shoe levers at three different locations in the center and towards each side of the inner barrier. At the end of the rod in front of the vertical arm is a torsion spring that activates a micro switch. The design of the lift operates so that the closer that weight is placed to the hinge of the inner barrier bridge plate, the further away it is located from the torsion spring and micro switch when the bridge plate is down. More force is required to move the opposite end of the bridge plate the same vertical distance to depress the torsion spring that activates the micro switch. Because the torsion spring is weight sensing, if the single front wheel of the wheelchair test device is located within 8 inches of the inner barrier hinge, there is insufficient weight sensed to activate the inner barrier interlock.
- b) Per the petitioners, the operation of the lifts does not cause an increased risk to safety. As an initial matter, the position of the wheelchair test device specified in the test procedure is inconsistent with the appropriate use of the lifts and does not

pose a safety risk in real-world operation. The test procedure at S7.6.2 provides that the platform should be maneuvered to vehicle floor level loading position and the wheelchair test device should be placed on the platform with the front wheel of the wheelchair test device facing the vehicle. The instruction in the test procedure to set up the wheelchair test device facing the entrance to the lift is contrary to the instructions provided in the Ricon operator's manual instructions and contrary to industry practice. The industry standard practice is to load wheelchair occupants onto a lift with their back to the vehicle. Loading in this direction prevents injury to the occupant's lower extremities and feet. The petitioners note that as written, the instructions in the test procedure are inconsistent with the industry standard and Ricon's operator's manual.¹ An excerpt from the operator's manual for the Titanium lifts describes how an occupant should board the lift (facing away from the vehicle). Similar instructions are provided for an occupant exiting the vehicle that also indicate that the occupant should face outward and away from the vehicle:

- c) The petitioners state it uses decals to indicate to the operator the correct means to load an occupant onto each wheelchair lift. The decals are placed on the vertical arms of the lift and face outward of the vehicle so that they are visible to the lift operator when loading a passenger onto the lift from ground level.
- d) Ricon next contends there is no increased risk to safety because placing a single front wheel on the inner roll stop, as required by the test procedure, is not a natural position for a wheelchair to enter and exit the lift. Even assuming an occupant was loaded and unloaded in the reverse position and contrary to the instructions

¹ The Titanium units are public use lifts. During the FMVSS No. 403 rulemaking process, a manufacturer noted that portions of the rule had testing conducted in one direction when the owner's manual provided for a different loading direction. *See* 67 FR 42526. The manufacturer took the position that such inconsistencies were contrary to the requirements of the ADA. In response, NHTSA concluded that since the ADA does not apply to private use lifts, the loading requirements were not inconsistent with the ADA. Here, however, the Ricon lifts are used as public use lifts. Although the ADA states that the lift shall permit for boarding and unboarding in both directions the industry practice and Ricon's (and other manufacturers) instructions provide for boarding in the reverse as an added level of occupant protection.

provided in the owner's manual, the wheelchair must be manipulated to achieve a position where one front wheel is placed on the inner roll stop. To do this, the wheelchair test device must be shifted back and forth (i.e. brought onto the inner roll stop, moved backwards and moved forwards at an angle) multiple times to position the test device so that only one front wheel is placed on the inner roll stop. This backwards and forwards shifting motion is not a natural motion and would not occur in ordinary use. In ordinary use, the wheelchair occupant enters and exits the vehicle with the occupant facing the street. Further, even if the occupant were to enter the lift backwards (i.e. facing the vehicle, per the test procedure), the platform lift is wide enough for the average sized wheelchair and scooter to fully roll onto the platform in a single motion so that the single front wheel of a wheelchair would not contact the inner roll stop within 8 inches of the hinge. The Titanium units (as with all Ricon's lifts) meet the requirements for ADA standard vehicle door widths. Consequently, the Titanium units are wide enough for the average sized wheelchair and scooter to roll onto the lift in a single motion.

- e) The petitioners add that these lifts incorporate a retention belt system as part of the platform lift design. The retention belt consists of durable webbing which is attached to and when belted, extends across each of the handrails. The retention belt serves dual purposes and is a redundant safety feature. The retention belt is a means to physically secure an occupant within the lift. In addition, the retention belt acts as an electrical interlock that is linked to the operation of the lift. If the retention belt is buckled, the electrical circuit is closed and the platform and outer barrier can operate when the buttons on the operator's pendant are pressed. If the belt is not buckled, the electrical circuit is broken and there is no power sent to any part of the lift and the platform cannot move and the inner roll stop will not deploy. However, in actual use outside of the test environment, the retention belt would not

be buckled (and the lift would not be powered) when the occupant is attempting to enter the vehicle from the ground. Consistent with the operator's instructions provided above, the retention belt is unbuckled as the occupant is entering the vehicle so that even if a single front wheel was present within 8 inches of the inner roll stop hinge, there is no safety consequence because the lift is not powered.

- f) The petitioners contend that the noncompliance with the inner barrier interlock arises only when the lifts are tested with one front wheel of the wheelchair test device located within 8 inches from the hinge and when the wheelchair is manipulated in the manner provided in the test procedure. When the lift is used consistent with the instructions provided with the operator's manual, the occupant enters and exits the lift facing away from the vehicle so that the two rear wheels of the wheelchair contact with the inner roll stop. Consistent with real-world use (and as demonstrated through the product's performance in the field), there is no safety risk because the weight of the rear wheels is sensed by the torsion spring so that the interlock is activated.

2. NHTSA has previously granted petitions where wheelchair lifts did not meet the performance requirements of FMVSS No. 403.

- a) In support of the petition, the petitioners contend the Agency has granted inconsequentiality petitions where the manufacturer has not met the performance requirements of FMVSS No. 403, finding that the noncompliance did not pose an increased risk to safety as the lift is used in the real world. Per The petitioners, the performance of their platform lifts is consistent with this precedent.
- b) For example, the petitioners note the Agency granted a petition for decision of inconsequential noncompliance submitted by The Braun Corporation (Braun) where the lift handrails did not meet the values for deflection force. While the handrails collapsed when exposed to forces above the threshold requirement, the handrail~ did not collapse or fail catastrophically. Per The petitioners, the Agency explained that

its concern in instituting the deflection force requirement was the possibility of a catastrophic failure of the handrails which would expose the occupant to a risk of injury. In granting the petition, the petitioners state the Agency "anticipated that future tests will specify placement and direction of forces that will be more focused to address worst-case handrail displacement and real-world safety problems." The petitioners further claim the Agency recognized the noncompliance, in this case, did not "pose a safety concern that the handrail requirements were intended to address." *See* 72 FR 19754 (April 19, 2007).

- c) The petitioners argue that as with the Agency's findings with the Braun petition, in actual use and consistent with the operator's manual, the Titanium units do not pose a safety risk in the real world. This is because the inner barrier interlock would sense the presence of the rear wheels of the wheelchair occupant who is loaded and unloaded facing away from the vehicle. The heavier weight of the rear wheels is picked up by the sensors and the inner barrier interlock is activated. The interlock performance is restricted only under the set up per the test procedure, with a single front wheel facing the vehicle.
- d) The petitioners contend that NHTSA has also granted an inconsequentiality petition where the deployed wheelchair retention device was unable to withstand the required 1,600 pounds of force. In that case, the Maxon Industry Inc. (Maxon) lifts included some designs where the outer barrier served as the wheelchair retention device and other designs with both a belt retention device and an outer barrier. The belt retention device also served as an electronic interlock that precluded the lift from moving up or down unless buckled.² The petitioners states the Agency granted the petition as to the units which incorporated the retention belt and noncompliant outer barrier, finding

² Ricon is aware of multiple manufacturers that use a belt interlock that functions in the same or similar manner to restrict the operation of the platform lift.

that such a design did not create an increased risk to safety since the belt's operation precluded the lift from moving and prevented the stated safety concern. Per The petitioners, the Agency denied the petition as to those units without the retention belt, reasoning that the lift occupant would only be relying upon a noncompliant outer barrier for protection. *See* 72 FR 28759 (May 22, 2007).

- e) The petitioners note that the Titanium units incorporate a retention belt that completely prevents lift electrical operation unless the retention belt is buckled.³ The retention belt would not be buckled, when the occupant is attempting to enter the vehicle, so that even in the unlikely event that a single front wheel of the wheelchair were placed 8 inches or less from the inner barrier hinge, per the test procedure, the lift would not be energized and the lift could not move at all. The petitioners argue that in granting the Maxon petition, the Agency recognized and accepted that the retention belt acted as a redundant safety feature precluded any safety risk. The belt interlock in the Ricon lifts as well as the operator's manual instructions create similar redundancies and offer equivalent protection to occupants.
- f) Finally, the petitioners argue the environment in which these lifts are used diminishes any potential risk to safety. All the lifts at issue are for commercial applications and operate as a public use lifts. In this context, there will be a lift attendant present to monitor the lift to ensure the occupant enters and exits the lift safely. When the lift attendant for the public use lift is following the operator's manual, there should not be an instance where the lift platform is powered and the occupant is unrestrained. Ricon has used this same design lift since the start of production for decades and is not aware of any claims or injury involving the performance of the inner roll stop interlock.

³ The Ricon lifts incorporate a means of manually descending the lift to allow a rider to exit the vehicle in the event of a lift malfunction.

The petitioners concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that their petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

The petitioners' complete petitions and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov> and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on these petitions only applies to the subject lifts and buses that the petitioners no longer controlled at the time it determined that the noncompliance existed. However, any decision of these petitions does not relieve vehicle or equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant lifts and buses under their control after the petitioners notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

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